**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**Case No. : Crl. Appeal No.283-SB of 1993**
**Date of Decision : March 16, 2007.**

Joginder Singh and others ..... Appellants

Vs.

State of Punjab ..... Respondent

**Coram : Hon'ble Mr.Justice Mahesh Grover**

* * *

Present : Mr.S.S.Chandi, Advocate
for the appellants.

Mr.G.C.Gupta, DAG, Punjab.

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**MAHESH GROVER, J. (Oral) :**

The appellants were convicted as follows :-

| ***"Name of accused*** | ***Under Section*** | ***Imprisonment*** |
|---|---|---|
| *Joginder Singh* | *148 IPC* | *R.I. of six months.* |
| *Balwinder Singh* | | |
| *Gurjant Singh* | | |
| *Sukhdev Singh* | | |
| *Joginder Singh* | *326 IPC* | *R.I. of 3-1/2 years and a fine of Rs.1000/-.* |
| *Balwinder Singh* | *326 IPC read* | *R.I. of 3-1/2 years and a fine of* |
| *Gurjant Singh* | *with 149 IPC* | *Rs.1000/- each and in case of* |
| *Sukhdev Singh* | | *default of payment of fine, to further undergo R.I. for six* |

| | | |
|---|---|---|
| | | *months more.* |
| *Sukhdev Singh* | *326 IPC* | *R.I. of 2 years and a fine of Rs.1000/-.* |
| *Joginder Singh*<br>*Balwinder Singh*<br>*Gurjant Singh* | *326 read with 149 IPC* | *R.I. of 2 years and a fine of Rs. 1000/- each and in default of payment of fine, further R.I. for a period of six months.* |
| *Joginder Singh*<br>*Balwinder Singh*<br>*Gurjant Singh* | *324 IPC* | *R.I. of 9 months.* |
| *Sukhdev Singh* | *324 read with 149 IPC* | *R.I. of 9 months.* |

*All these sentences were directed to run concurrently."*

On 18.9.1986, the complainant Mohan Singh along with his brother Beant Singh was present at his house at about 5:30 – 6:00 P.M., in the area of Village Dikh. Gurmel Kaur wife of Mohan Singh was also present. Gurdial Singh – Sarpanch of the Village came there to inform them that their dispute regarding the ABADI area could be settled upon which Mohan Singh is stated to have told him that the Panchayat could settle the matter according to its wishes, upon which Gurdial Singh is stated to have returned.

Thereafter all the accused persons i.e. Joginder Singh, Balwinder Singh, Gurjant Singh and another person of Village Pakho known as Burma Wala came on the tractor driven by Joginder Singh. The tractor was stopped near the house of Mohan Singh and thereupon Joginder Singh took out a *ghop* from the tractor and Balwinder Singh took out an

iron rod. Gurjant Singh and the other person by the name of Burma Wala were armed with *gandasa* at that time. Gamdur Singh, while armed with .12 bore licenced gun raised lalkaras to teach the complainant a lesson and that he would be responsible for the same.

Thereafter all these persons named above attacked Mohan Singh and Beant Singh and caused the following injuries which were reflected in the medico-legal report conducted subsequently :-

| ***"Name of the person*** | ***Detail of Injuries*** |
|---|---|
| *Beant Singh* | *1. An incised wound 2 x 2-1/2 cms. over the left cheek starting at the outer side of the ala of left nostril. X-Ray was advised.* |
| | *2. An incised wound L Shaped 2 x ¼ cm over the front of the left parietal region. X-Ray of skull was advised.* |
| | *3. An incised wound over the palmer surface of the middle phallynx of left thumb 2 x ½ cm. Left thumb X-Ray was advised.* |
| | *4. A fiffuse swelling around the base and shaft of left First matacarpal. Underlying tenderness was present. X-Ray of left thumb was advised.* |
| *Mohan Singh* | *1. An incised wound L shaped over the outer can thus of right eye. X-Ray of skull was advised. Black eye on the right side.* |

| | | |
|---|---|---|
| | 2. | *A bruise 4 cms. x 2 cms. over the pastero-lateral surface of middle of right leg.* |
| | 3. | *A bruise 4 cms. x 2 cms. over the left scapular region.* |
| | 4. | *A bruise 5 cms. x 4 cms. over the left side of the back of chest wall.* |
| *Gurmel Kaur* | 1. | *A stab wound ½ cm. x ½ cm. and 1-1/2 cms. deep over the postero medical aspect of upper one third of left leg.*" |

The FIR was lodged on the next day i.e. on 19.9.1986 ostensibly for the reason that it was explained during evidence that the injured were not in a position to make a statement to the police.

Thereafter the police set the investigative process into motion and prima facie found the allegations made in the FIR to be correct and submitted a challan under Section 173 of the Cr.P.C. against all the accused persons named in the FIR.

The appellants were thereafter sent to stand trial and were charged for having committed an offence under Section 307/326/324/148/149 and 452 IPC. The appellants pleaded false implication and claimed trial.

The prosecution examined as many as eight witnesses to establish the guilt of the appellants.

During the pendency of the case, Gamdur Singh – one of the accused persons, is stated to have died.

Subsequently, the statements of the remaining accused persons were recorded under the provisions of Section 313 of the Cr.P.C., whereupon they denied all the allegations levelled against them and set up a

plea of false implication. No evidence in defence was, however, led by them.

The trial court, on examination of the entire evidence before it, convicted the appellants and sentenced them to various periods of imprisonment, details of which have been given in the foregoing paragraphs.

Aggrieved by the aforesaid sentence and conviction awarded by the trial court, vide its judgment dated 13.7.1993, the appellants have filed the present appeal.

It has been contended by the learned counsel appearing for the appellants that there is a delay in the lodging of FIR. Even if it was to be assumed that some of the injured persons were unfit to make statement, yet Gurmel Kaur who was also the injured, having suffered superficial injuries, which were also suspect according to the testimony of PW-1 Dr.J.S.Sandhu, hence, FIR could easily have been lodged immediately after the occurrence or within a probable duration thereto.

It was further contended that the injuries, on the basis of which conviction under Section 326 has been accorded to the appellants, could have been from blunt weapon alone and the corresponding cut or incised wound could have been a self-inflicted injury which is also borne out from the statement of PW-1. That apart, since the fifth accused person Gamdur Singh is stated to have died, his presence at the time of the occurrence was suspect and consequently, provisions of Section 148 and 149 could not be stated to have been attracted in the present case. That apart, no independent witness was examined, even though the incident is stated to have taken place in the heart of the village within the ABADI area.

On the other hand, learned counsel for the State contended that all the injured witnesses have supported the prosecution case to the hilt. There is absolutely no reason to implicate the appellants falsely and if the plea of false implication had been raised by the appellants then they should

have given some justifiable reasons and brought on record some evidence to establish the plea so raised by them.

I have heard learned counsel for the parties and have perused the record.

There has been no denial to the incident as such. The sole emphasis of the argument of the learned counsel for the appellants was that at best, the conviction could have been recorded under Section 324 or 325 for the reason that the use of sharp-edged weapons has not been established by the evidence on record. I am afraid the argument appears to be academic.

PW-1 Dr.J.S.Sandhu has opined during his examination-in-chief that had timely aid not been given to the complainants, then the collective effect of the injuries could possibly be dangerous to life. The injuries also reveal fracture of the right side of the frontal bone of the skull besides the other injuries which have been inflicted on the person of the complainant.

The appellants, therefore, cannot escape the conclusion that they were squarely responsible for having caused the injuries on the complainant which appear to be unprovoked and also the fact that the complainants were in front of their houses when they were attacked.

No other discrepancy has been pointed out which could persuade this Court to come to a conclusion that the prosecution case has been propped up. There is thus no hesitation to uphold the judgment of the trial court dated 13.7.1993.

Having regard to the facts and circumstances of the case, the sentence of 3-1/2 years awarded under the provisions of Section 326 IPC also does not appear to be unreasonable. But keeping in view the fact that all the accused persons were young within the age group of 23-35 years and the fact that after a lapse of 14 years, they would be required to undergo the remaining portion of their sentence when they would be fairly entrenched in

their lives, it is deemed desirable and in the interest of justice that their sentence be reduced to already undergone in case they deposit a compensation of Rs.20,000/- each to be given to the complainants Mohan Singh, Beant Singh and Gurmel Kaur i.e. all the injured persons in equal proportion.

The aforesaid amount be deposited before the trial court within a period of three months from today and the said amount be disbursed to the complainants after due notice to them. It is made clear that if the aforesaid amount is not deposited within the reasonable time, the sentence and conviction so awarded by the trial court and upheld by this Court shall stand revived.

In that eventuality, the bail bonds of the appellants shall be cancelled forthwith.

Disposed of with the aforesaid observations.

**March 16, 2007** **( MAHESH GROVER )**
*monika* **JUDGE**